

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 728

Introduced by Lautenbaugh, 18.

Read first time January 06, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to offenses against children; to amend section
2 29-119, Reissue Revised Statutes of Nebraska; to adopt
3 the Exploited Children's Civil Remedy Act; to redefine a
4 term with respect to plea agreements; and to repeal the
5 original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and
2 may be cited as the Exploited Children's Civil Remedy Act.

3 Sec. 2. For purposes of the Exploited Children's Civil
4 Remedy Act:

5 (1) Aid or assist another with the creation,
6 distribution, or active acquisition of child pornography means
7 help a principal in some appreciable manner with the creation,
8 distribution, or active acquisition of a visual depiction of
9 sexually explicit conduct which has a child as one of its
10 participants or portrayed observers. The term also includes
11 knowingly employing, forcing, authorizing, inducing, or otherwise
12 causing a child to engage in any visual depiction of sexually
13 explicit conduct which has a child as one of its participants or
14 portrayed observers. No parent, stepparent, legal guardian, or any
15 person with custody and control of a child, knowing the content
16 thereof, may consent to such child engaging in any visual depiction
17 of sexually explicit conduct which has a child as one of its
18 participants or portrayed observers;

19 (2) Child has the same meaning as in section 28-1463.02;

20 (3) Create means to knowingly create, make, manufacture,
21 direct, publish, finance, or in any manner generate;

22 (4) Distribute means the actual, constructive, or
23 attempted transfer from one person, source, or location to another
24 person, source, or location. The term includes, but is not limited
25 to, renting, selling, delivering, displaying, advertising, trading,

1 mailing, procuring, circulating, lending, exhibiting, transmitting,
2 transmuting, transferring, disseminating, presenting, or providing
3 any visual depiction of sexually explicit conduct which has a child
4 as one of its participants or portrayed observers;

5 (5) Participant means a child who appears in any visual
6 depiction and is portrayed or actively engaged in acts of sexually
7 explicit conduct appearing therein;

8 (6) Portrayed observer means a child who appears in
9 any visual depiction where sexually explicit conduct is likewise
10 portrayed or occurring within the child's presence or in the
11 child's proximity;

12 (7) Sexually explicit conduct has the same meaning as in
13 section 28-1463.02; and

14 (8) Visual depiction has the same meaning as in section
15 28-1463.02.

16 Sec. 3. (1) Any participant or portrayed observer in a
17 visual depiction of sexually explicit conduct or his or her parent
18 or legal guardian who suffered or continues to suffer personal
19 or psychological injury as a result of such participation or
20 portrayed observation may bring a civil action against any person
21 who knowingly and willfully (a) created, distributed, or actively
22 acquired such visual depiction while in this state or (b) aided
23 or assisted with the creation, distribution, or active acquisition
24 of such visual depiction while such person or the person aided or
25 assisted was in this state.

1 (2) A plaintiff who prevails in a civil action brought
2 pursuant to the Exploited Children's Civil Remedy Act may recover
3 his or her actual damages, which are deemed to be a minimum of one
4 hundred fifty thousand dollars, plus any and all attorney's fees
5 and costs reasonably associated with the civil action. In addition
6 to all other remedies available under the act, the court may also
7 award temporary, preliminary, and permanent injunctive relief as
8 the court deems necessary and appropriate.

9 (3) This section does not create a cause of action if
10 the participant was sixteen years or older at the time the visual
11 depiction was created and the participant willfully and voluntarily
12 participated in the creation of the visual depiction.

13 Sec. 4. Notwithstanding any other provisions of law, any
14 action to recover damages under the Exploited Children's Civil
15 Remedy Act shall be filed within three years after the later of:

16 (1) The conclusion of any related criminal prosecution
17 against the person or persons from whom recovery is sought;

18 (2) The receipt of actual or constructive notice sent
19 or given to the participant or portrayed observer or his or her
20 parent or legal guardian by a member of a law enforcement entity,
21 informing the participant or portrayed observer or his or her
22 parent or legal guardian that the entity has identified the person:

23 (a) Who created, distributed, or actively acquired the
24 visual depiction of the participant or portrayed observer; or

25 (b) Who aided or assisted another person with the

1 creation, distribution, or active acquisition of the visual
2 depiction of the participant or portrayed observer; or

3 (3) The participant or portrayed observer reaches the age
4 of eighteen years.

5 Sec. 5. In any action brought pursuant to the Exploited
6 Children's Civil Remedy Act, a plaintiff may request to use a
7 pseudonym instead of his or her legal name in all court proceedings
8 and records. Upon finding that the use of a pseudonym is proper,
9 the court shall ensure that the pseudonym is used in all court
10 proceedings and records.

11 Sec. 6. It is not a defense to a cause of action brought
12 pursuant to the Exploited Children's Civil Remedy Act that the
13 defendant:

14 (a) Did not know the participant or portrayed observer
15 appearing in the visual depiction of sexually explicit conduct;

16 (b) Did not appear in the visual depiction of sexually
17 explicit conduct containing the participant or portrayed observer;
18 or

19 (c) Did not commit, assist with the commission, or
20 personally observe the commission of acts of sexually explicit
21 conduct portrayed in the visual depiction containing the
22 participant or portrayed observer.

23 Sec. 7. To prevent ongoing and further exploitation of
24 any person who was a participant or portrayed observer or his or
25 her parent or legal guardian, the Attorney General, upon request,

1 may pursue cases on behalf of any participant or portrayed observer
2 or his or her parent or legal guardian who has a bona fide cause of
3 action under the Exploited Children's Civil Remedy Act. All damages
4 obtained shall go to the plaintiff or plaintiffs. For his or her
5 role in pursuing a civil action under the act, the Attorney General
6 may seek all of his or her reasonable attorney's fees and costs
7 associated with the civil action.

8 Sec. 8. Section 29-119, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 29-119 For purposes of this section and sections 23-1201,
11 29-120, and 29-2261, unless the context otherwise requires:

12 (1) A plea agreement means that as a result of a
13 discussion between the defense counsel and the prosecuting
14 attorney:

15 (a) A charge is to be dismissed or reduced; or

16 (b) A defendant, if he or she pleads guilty to a charge,
17 may receive less than the maximum penalty permitted by law; and

18 (2) Victim means a person who, as a result of a homicide
19 ~~as defined in~~ under sections 28-302 to 28-306, a first degree
20 sexual assault ~~as defined in~~ under section 28-319, a first degree
21 assault ~~as defined in~~ under section 28-308, a sexual assault
22 of a child in the second or third degree ~~as defined in~~ under
23 section 28-320.01, a sexual assault of a child in the first
24 degree ~~as defined in~~ under section 28-319.01, a possession of
25 a visual depiction of sexually explicit conduct under section

1 28-813.01 who has been identified and can be reasonably notified,
2 a distribution offense of a visual depiction of sexually explicit
3 conduct under section 28-1463.03, 28-1463.04, or 28-1463.05 who has
4 been identified and can be reasonably notified, a second degree
5 assault ~~as defined in~~ under section 28-309, a first degree false
6 imprisonment ~~as defined in~~ under section 28-314, a second degree
7 sexual assault ~~as defined in~~ under section 28-320, or a robbery ~~as~~
8 ~~defined in~~ under section 28-324, has had a personal confrontation
9 with the offender and also includes a person who has suffered
10 serious bodily injury as defined in section 28-109 as a result of a
11 motor vehicle accident when the driver was charged with a violation
12 of section 60-6,196 or 60-6,197 or with a violation of a city or
13 village ordinance enacted in conformance with either section. In
14 the case of a homicide, victim means the nearest surviving relative
15 under the law as provided by section 30-2303 but does not include
16 the alleged perpetrator of the homicide. In the case of a sexual
17 assault of a child, a possession of a visual depiction of sexually
18 explicit conduct, or a distribution offense of a visual depiction
19 of sexually explicit conduct, victim means the child victim and the
20 parents, guardians, or duly appointed legal representative of the
21 child victim but does not include the alleged perpetrator of the
22 ~~sexual assault.~~ crime.

23 Sec. 9. Original section 29-119, Reissue Revised Statutes
24 of Nebraska, is repealed.